

Richard J. Lee, Ph.D. February 14, 2007

Page 1

1 IN THE UNITED STATES BANKRUPTCY COURT FOR THE
2 WESTERN DISTRICT OF PENNSYLVANIA

2

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In Re:) Chapter 11
4)
W.R. Grace & Co., et al., 1,) Case No. 01-01139
5) (JKF)
6) Jointly Administered
Debtors.)

7

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10

11

12 DEPOSITION OF: RICHARD J. LEE, Ph.D.

13

14

DATE: February 14, 2007
15 Wednesday, 1:37 p.m.

16

LOCATION: REED SMITH, LLP
17 435 Sixth Avenue
Pittsburgh, PA 15219

18

19 TAKEN BY: Claimants

20

REPORTED BY: Heidi H. Willis, RPR, CRR
21 Notary Public
AKF Reference No. HW99625A

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23

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25

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1 DEPOSITION OF RICHARD J. LEE, Ph.D.,
2 a witness, called by the Claimants for examination,
3 in accordance with the Federal Rules of Civil
4 Procedure, taken by and before Heidi H. Willis, RPR,
5 CRR, a Court Reporter and Notary Public in and for
6 the Commonwealth of Pennsylvania, at the offices of
7 Reed Smith, LLP, 435 Sixth Avenue, Pittsburgh,
8 Pennsylvania, on Wednesday, February 14, 2007,
9 commencing at 1:37 p.m.

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1 ----
2 PROCEEDINGS
3 ----

4 MR. RESTIVO: We are starting a new
5 deposition, same day, same case. You should
6 reswear the witness, and we'll go some more. I
7 don't want to say start over because I don't
8 want you to repeat everything that's been done.
9 I can't say continue because it's a new
10 deposition, but we will start over. We will
11 start again.

12
13 RICHARD J. LEE, Ph.D.,
14 being first duly sworn,
15 was examined and testified as follows:

16 ----
17 EXAMINATION
18 ----

19 BY MS. KEARSE:
20 Q. Good afternoon, Dr. Lee.
21 A. Good afternoon.
22 Q. My name is Anne Kearse, and I'm here on behalf
23 of the Motley Rice Claimants, and we just made
24 some comments on and off the record, but we've
25 been going for many, many hours today on behalf

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(No Deposition Exhibits were marked.)

1 of some of the Speights & Runyan Claimants, and
2 to the extent there's some questions of a
3 general nature, they can certainly apply in
4 this deposition as well. I'll try not to
5 rehash everything, but of course I have to ask
6 for some clarification on a couple of things.

7 Let me start off, because I missed
8 the first three minutes of your deposition, did
9 you produce today a copy of your CV, a recent
10 copy of your CV?

11 A. I have not.
12 Q. Do you have one with you?
13 A. I do not.
14 Q. Can we just go ahead and provide that to
15 counsel and make that as an attachment, I guess
16 it's a new exhibit, so new Exhibit No. 1?
17 Would that be any problem, Counsel?

18 MR. RESTIVO: I don't think it's a
19 problem. I think it's probably attached to one
20 or more of Dr. Lee's expert reports in this
21 case, but if you want us to pull it off an
22 expert report and attach it to this transcript,
23 I don't have a problem doing it.

24 MS. KEARSE: Let's see. Let me
25 clarify. I've got, Dr. Lee, one of your

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<p style="text-align: right;">Page 6</p> <p>1 reports from January 15th, 2007, and it does 2 have a copy, it looks like it doesn't have – 3 MR. RESTIVO: But all we would do is 4 pull that copy off. I don't think we have 5 anything that postdates January of 2007. 6 MS. KEARSE: Okay. Well, let me ask 7 it this way. 8 BY MS. KEARSE: 9 Q. Dr. Lee, I have attached to that January 15th, 10 2007 report on lack of hazards a CV that looks 11 like it's dated 4/28/2006. Would that be your 12 most recent CV? 13 A. I would think so. 14 Q. Is there anything, without having it in front 15 of you, that you would be aware of that you are 16 working on that would not appear on that CV as 17 it relates to asbestos? 18 A. No. 19 Q. Then I won't make that part of the record. 20 I've got that. 21 I understand that you have with you 22 today a number of claim files that you or your 23 staff have reviewed; is that correct? 24 A. Almost. We've got a number of Claimant files, 25 the physical files which were requested by</p>	<p style="text-align: right;">Page 8</p> <p>1 to make some inquiries about that, because I do 2 have some questions specifically about those 3 four. That's why I was going to short circuit 4 everything. 5 Is that going to be a problem? 6 MR. RESTIVO: I don't think so. I 7 mean I'm not answering you because I don't have 8 the claim files here. I think what you are 9 requesting is Dr. Lee should dig out those four 10 claim files. I'm requesting, Doctor, you send 11 a copy to me so I know what it is people are 12 talking about, and then I will engage with you, 13 Anne, on perhaps having a quick telephonic 14 deposition limited to whatever's in those four 15 claim files. 16 MS. KEARSE: Right. 17 MR. RESTIVO: And, again, we would 18 have brought them if someone would have 19 specifically asked us. 20 MS. KEARSE: Okay. I thought you 21 were going to have all the data that backed up 22 these reports, but we can work that out again, 23 and it shouldn't take very long, and I'll still 24 go through what I have and see how far we can 25 get, and if there's some specific things that</p>
<p style="text-align: right;">Page 7</p> <p>1 Speights – 2 MR. RESTIVO: We do not have, Anne, 3 because I was going to look at it once you 4 identified the numbers you were going to talk 5 about, we do not have the actual claim file 6 material for the four claims you identified. 7 Dr. Lee does have information on his 8 spreadsheet with respect to those claim 9 numbers, but because they were not included in 10 the Speights & Runyan document request, they 11 never ended up in the two boxes of claim files 12 we have here. 13 MS. KEARSE: Okay. Jim, is there a 14 way – you know, I don't want to prolong it or 15 reopen a deposition, or I could even do a quick 16 deposition on those four. I was under the 17 impression you would have all of those there 18 today, but maybe I had it wrong as well, but 19 that's what we were told, we didn't really have 20 to renote anything in order to participate. 21 I can go forward, but I probably 22 would at least like to have what the doctor and 23 his office actually have in their possession 24 regarding the claims and probably be given an 25 opportunity, very briefly, again, by telephone,</p>	<p style="text-align: right;">Page 9</p> <p>1 the doctor would have to rely on what's in the 2 files, then I would like to open that up for a 3 brief deposition. 4 MR. RESTIVO: All right. With the 5 same ground rules? Off the record. 6 ---- 7 (There was a discussion off the record.) 8 ---- 9 MS. KEARSE: I'd also like to, for 10 the record, in an earlier deposition there was 11 a request for the amount of time and money you 12 received from W.R. Grace in relation to those 13 product ID charts, any such information I'd ask 14 also be provided to Motley Rice counsel as 15 well. 16 MR. RESTIVO: We will similarly take 17 your request under advisement. 18 BY MS. KEARSE: 19 Q. And in addition to that, I don't know if this 20 question was asked, Dr. Lee, can you estimate 21 for me how much money you have made from W.R. 22 Grace in asbestos litigation matters since the 23 first time you consulted with them? 24 A. No. 25 Q. Have you ever been asked to calculate that?</p>

3 (Pages 6 to 9)

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<p>1 A. I've been asked how much money I've made in 2 asbestos litigation. I think I've been asked 3 most of the questions, but I would have no way 4 of finding that out.</p> <p>5 Q. Have you been asked to specifically address the 6 question about how much money you have made 7 from your consulting with W.R. Grace?</p> <p>8 A. I don't believe so. I can't -- I don't 9 remember, frankly, but I don't -- not that I 10 remember, let me put it that way.</p> <p>11 Q. Let me ask you this: When did you first start 12 working with W.R. Grace?</p> <p>13 A. Probably the latter part of the '80s.</p> <p>14 Q. And can you give me a rough estimate of the 15 percentage of time that you have worked on W.R. 16 Grace matters?</p> <p>17 A. I really can't.</p> <p>18 Q. Doctor, you referred to a protocol earlier. Do 19 you actually have a protocol that's written out 20 that you used in order to look at the data and 21 work on these spreadsheets and reports?</p> <p>22 A. We had -- we had -- I think if you look in our 23 report, I put down the synopsis of the 24 procedure, protocol that we used.</p> <p>25 Q. But prior to this report dated January 17th,</p>	<p>1 out what it is, see whether it's relevant or 2 privileged and take under advisement your 3 request.</p> <p>4 MS. KEARSE: Okay. I hereby request 5 that file.</p> <p>6 BY MS. KEARSE:</p> <p>7 Q. Dr. Lee, aside from that file, within I guess 8 your organization, would the Mr. Potter and I 9 believe it was a Ms. Christina --</p> <p>10 A. Yes.</p> <p>11 Q. -- would they have separate files in regard to 12 this case as well?</p> <p>13 A. No.</p> <p>14 Q. It would all be located in one case file?</p> <p>15 A. Yes. Just by way -- the vast majority of that 16 file is actually a claim document, and there's 17 like 45 boxes of those documents.</p> <p>18 Q. And, I told counsel I'm not looking for any of 19 that claim documents but --</p> <p>20 A. I think you just make that clear in your 21 letter, so I don't get requested to copy 45 22 boxes of stuff.</p> <p>23 Q. Dr. Lee, within that file, would that have 24 various iterations of what classifications you 25 were looking at?</p>
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<p>1 2007, while you were going through the analysis 2 and the methods you were going through, do you 3 have a protocol that gives guidance on the 4 material?</p> <p>5 A. I think the answer is -- I guess the answer is 6 I don't recall from when we started. I know we 7 had tried a number of forms and laid out 8 definitions and, you know, for the various 9 categories we were going to consider, and I 10 think those were on some kind of paper. I 11 don't know that we ever classified it as one of 12 our protocols, you know, that we would have in 13 the standard operating procedure.</p> <p>14 Q. Do you have a file that you could go to that's 15 just pretty much this W.R. Grace product ID 16 project that you did on behalf of -- in a 17 bankruptcy setting?</p> <p>18 A. For this case?</p> <p>19 Q. Yes.</p> <p>20 A. Yes, we would.</p> <p>21 MS. KEARSE: Counsel, any objection 22 to producing that file?</p> <p>23 MR. RESTIVO: I don't know what's in 24 it, so I certainly would not agree to produce 25 it. If you are requesting it now, I will find</p>	<p>1 A. I would doubt it. I can check. You know, I 2 would have been working on those as drafts.</p> <p>3 Q. To the extent all that's in the file, we have 4 an outstanding request to review that.</p> <p>5 Dr. Lee, let me just clarify a couple 6 of things. You've done no independent analysis 7 of any of the samples in this case?</p> <p>8 A. That's correct.</p> <p>9 Q. Dr. Lee, in the past, you'll agree with me that 10 when you've consulted with Grace, you've 11 typically looked at bulk samples; is that 12 correct?</p> <p>13 A. To the extent there is a typical, I've done 14 both, but certainly I've done a lot of bulk 15 analysis for Grace.</p> <p>16 Q. Do you know how many, over your career, how 17 many bulk samples you've reviewed for Grace?</p> <p>18 A. No, I do not.</p> <p>19 Q. Do you have an idea of how many bulk samples 20 you've reviewed within your career, regardless 21 of who asked you to do that?</p> <p>22 A. No.</p> <p>23 Q. Would you have anything in your office that 24 would help calculate it?</p> <p>25 A. No, I don't think I would have any way of</p>

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A. William Roberts, Jr. & Associates (800) 743-DEPO

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<p style="text-align: right;">Page 14</p> <p>1 knowing. That's not a record we would keep or 2 compile. 3 Q. I just didn't know if maybe it was in a 4 brochure somewhere or -- 5 A. Are you waiting for an answer from me? 6 Q. No, no, no, I'm cutting out some things I don't 7 need to ask you. 8 A. That's okay. I was just checking. 9 Q. Doctor, if I'm correct from your report and 10 your prior testimony, you actually reviewed 11 data for 15,000; is that correct? 12 A. That's correct. 13 Q. And it's my understanding you reviewed the data 14 for 15,000 samples under the assumption that 15 the Claimants were alleging all 15,000 samples 16 were W.R. Grace products; is that your 17 understanding? 18 A. Well, not quite. We reviewed data, we reviewed 19 the data that was -- the decision -- the 20 request to us was to evaluate bulk sample data 21 as a part of Claimants files and determine 22 whether or not it provided evidence of W.R. 23 Grace product in the building, in the various 24 buildings. 25 Q. But did you do that under the assumption that</p>	<p style="text-align: right;">Page 16</p> <p>1 attorneys, understood was that the Claimants 2 were to provide information establishing the 3 product, and so at least the attorneys, to the 4 extent that a bulk sample was provided by a 5 Claimant, yes, Dr. Lee's organization was asked 6 to look at the bulk sample information provided 7 because it came in with the claim form, and we 8 thought that's what the claim form was asking 9 for. 10 BY MS. KEARSE: 11 Q. And just to be clear, Doctor, you are not going 12 to opine that the Claimants were claiming these 13 nonsurface materials were, in fact, Grace 14 products, are you? 15 A. No, I -- I'll testify to what we analyzed and 16 what I have concluded. 17 Q. Let me ask it this way: Without even looking 18 at the first piece of paper or claim form, 19 would you agree with me that you could have 20 advised counsel that if it's not surface 21 material, it's not W.R. Grace? 22 A. Well, I think that -- I think the attitude is 23 insofar as any information I've been provided 24 related to asbestos-containing materials, 25 building products, if it were floor tile,</p>
<p style="text-align: right;">Page 15</p> <p>1 Claimants were alleging that those samples were 2 W.R. Grace products? 3 A. Under the assumption that they had provided 4 those in support of their claims, and generally 5 they had the product alleged, so I think it was 6 necessary that you at least sort out and say 7 this -- like in your first claim, the product 8 alleges MonoKote-3, but there was floor tile 9 and so on, that at least that was not the 10 product. 11 Q. Who told you to go about it that way? 12 A. Well, this was done in discussions with the 13 attorneys. I don't think anyone told me. I -- 14 they asked -- they said we would like you to 15 review the information. We took a look at some 16 initial claims and said here's -- here's the 17 kinds of things we think we are going to be 18 able to say and about these individual samples, 19 and the decision was made that that's what we 20 should do. 21 MR. RESTIVO: Anne, Jim Restivo, we 22 understood, and I'm not trying to testify for 23 Dr. Lee, but to move this along -- 24 MS. KEARSE: Are you sure? 25 MR. RESTIVO: -- what we, the</p>	<p style="text-align: right;">Page 17</p> <p>1 ceiling tile or other nonsurfacing, we would 2 put it in a non-Grace category. 3 Q. But it could have saved a lot of work on your 4 part just to say a nonsurface material is not 5 Grace; correct? 6 A. Well, I think that's, you know, that's sort of 7 an administrative matter more than anything 8 else. The primary time that gets consumed in 9 reviewing files is, in fact, validating that 10 you haven't missed anything and that what data 11 you've got is entered properly. 12 When you start -- when you start 13 doing sort of half measures, even if you would 14 have said this is not, you would still have had 15 to catalog them somehow. I think that what we 16 did was far and away the most efficient 17 utilization of time but still permitted 18 conclusions to be drawn. 19 Q. Well, are you aware that you reviewed a lot of 20 data for claims that W.R. Grace isn't even 21 objecting to product ID? 22 A. I have no idea about that. 23 Q. Would you agree with me that your report does 24 indicate that 51 percent of the samples or data 25 that you reviewed was for nonsurfacing</p>

5 (Pages 14 to 17)

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1 products; correct?

2 A. Yes.

3 Q. And would you agree with me that another

4 probably sweeping suggestion could be that if

5 you've got a bulk sample analysis that only

6 shows that asbestos is in the product, that you

7 would find that an insufficient basis to opine

8 one way or the other that it's a Grace product?

9 A. Unless it was either very high or very low,

10 then I could conclude it's most likely not a

11 Grace product.

12 Q. And would you have a range of your high/low?

13 A. No. I think we went through that before, and,

14 you know just as a general rule, if it's more

15 than twice the product formula or less than

16 half, you can start to say that most

17 laboratories will get it right within that

18 boundary.

19 Q. In your analysis about 35 percent of the claims

20 were insufficient information because it didn't

21 have the additional constituents other than

22 asbestos; correct?

23 A. Yes.

24 Q. And you state that 10 percent of the surfacing

25 material and results didn't match Grace. Do

Page 20

1 know that I can —

2 Q. Okay. Well maybe that's something we can work

3 on down the road if we have to.

4 A. Yeah.

5 Q. All right. Doctor, I'm going to give a little

6 bit of scope of where I'm going with my four

7 claims and why I'm just going to concentrate on

8 them. For a number of my Claimants, you found

9 samples that were, quote, not inconsistent with

10 a Grace product; right? You found that

11 generally. You don't know which ones are mine,

12 which ones are not?

13 MR. RESTIVO: He really doesn't.

14 Q. There's a number of my Claimants in which you

15 found that the samples were not inconsistent

16 with a Grace product.

17 A. Okay. I had for you 3406, 3515, 6941, and the

18 last one I seem to have gotten the number

19 wrong.

20 Q. It's 6941.

21 A. 27 something?

22 MR. RESTIVO: Well, the number was

23 wrong, 2977 I think is what she's talking

24 about.

25 Q. Yeah, 2977. Let me do it this way because I'm

Page 19

1 you know how many claims, buildings that

2 represents?

3 A. No, I do not.

4 Q. Is there any way you could calculate for me

5 what the percentage of claims that just out of

6 the surface material that had sufficient data

7 to enable you to opine one way or the other as

8 to whether it's Grace?

9 A. Well, if — I think this — I think the answer

10 is about 20 percent of the surfacing claims —

11 I'm sorry, what was your question again? I'm

12 sorry, I'm looking at a spreadsheet here trying

13 to figure out whether I can answer your

14 question.

15 Q. Okay. Let me do it this way. You went through

16 the analysis based on 15,000 bulk sample

17 materials, okay. If I do the analysis from —

18 take those claims that were surface materials

19 with sufficient data, what percentage out of

20 that population would you be able to opine as

21 to whether or not it was a Grace product?

22 A. I don't know the answer to that.

23 Q. Is that something you could calculate for me?

24 A. I'm not sure. I'm sure I could go through and

25 do it with sufficient time, but I'm — I don't

Page 21

1 going to go over the ones I'm really not going

2 to talk about today except to say we are not

3 going to talk about them, but I'll give you an

4 example, how's that.

5 No. 3405, you found that samples that

6 were not inconsistent with a Grace product?

7 A. This is the Fargo housing —

8 Q. I'm just using this as a way of example so I

9 can get to the four we need to talk about.

10 A. Okay. Yeah.

11 Q. And let me just ask you this, when you use this

12 not inconsistent with a Grace product, is it

13 okay to infer that that item would be

14 consistent with a Grace product?

15 A. Well, it's trying to keep that sharp. It is

16 consistent within the analysis provided, but

17 not inconsistent is really somewhat different

18 in that it only means that the information we

19 have is — falls within the Grace product

20 formula, but there may well be, to make an

21 identification, with you may well need more

22 information.

23 Q. Right, but really if it's not inconsistent,

24 it's somewhat consistent with?

25 A. Yeah, the data you have is not inconsistent.

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<p style="text-align: right;">Page 22</p> <p>1 Q. We are getting double negatives in there, so 2 trying to make it a little easier. 3 So would you agree with me that your 4 report states and you've opined today when you 5 say it's, quote, not inconsistent with a Grace 6 product, that you do mean that it possibly is a 7 Grace product? 8 A. It -- I would mean it could possibly be a Grace 9 product. 10 Q. And you were not asked to make conclusive 11 opinions as to whether or not they are, in 12 fact, Grace product; correct? 13 A. That's not true. 14 Q. That's not true? 15 A. I am asked to make a conclusive opinion where 16 there's sufficient data where it's not a Grace 17 product, which I can do, and it's not really 18 not a Grace product, it's -- 19 Q. Let me clarify that. For those cases and 20 samples that you've stated are, quote, not 21 inconsistent with a Grace product, for those 22 samples, you have not been asked to make any 23 more conclusive opinion as to whether, in fact, 24 they are a Grace product or not; correct? 25 A. That's correct. We are looking at a comparison</p>	<p style="text-align: right;">Page 24</p> <p>1 in addition to what you have done in your 2 analysis to say it's not inconsistent with a 3 Grace product? 4 A. Well, I think my analysis and my opinion is 5 based solely on the data. To the extent that 6 you go beyond that, it really falls outside the 7 range of what I'm asked to do or what I do do. 8 Q. So one way or the other, if there's a sales 9 invoice to a particular job that you've 10 actually looked at samples for, you don't look 11 at that material? 12 A. Well, I don't know that I don't look at it, but 13 I don't rely on it. 14 Q. Have you requested such information from W.R. 15 Grace in any of these claim files in this case? 16 A. No. 17 Q. And for the record, the reason I'm going to 18 limit my questioning to the four claims that I 19 asked for earlier -- 2977, 3406, 3515 and 20 6941 -- is that it's my understanding that W.R. 21 Grace did not object on a PID basis to those 22 claims, so if that's stated for trial, I don't 23 need to go into any other ones except the ones 24 they raise an objection to, which is why I'm 25 focusing on those four claims, just so you know</p>
<p style="text-align: right;">Page 23</p> <p>1 with the results of the analysis with product 2 formula. 3 Q. And you'll agree with me based on that 4 information we have today, additional 5 information, such as sales records, applicator 6 testimony or other such information may assist 7 in whether or not those are actually Grace 8 products within those buildings; correct? 9 A. Well, I think it's just beyond the scope, 10 beyond my scope. It's -- 11 Q. That would be a fair analysis of some further 12 steps you could take to state whether or not 13 there is a Grace product in the building; 14 correct? 15 MR. RESTIVO: I'm going to object to 16 the form of the question, and I would ask you 17 to make it clearer. Are you asking for his 18 expert opinion on that question? And if so, I 19 object because that's not his area of 20 expertise. 21 BY MS. KEARSE: 22 Q. Okay. You have no opinion as to whether or not 23 additional information, such as sales records, 24 could help someone actually determine whether 25 or not it's a Grace product within the building</p>	<p style="text-align: right;">Page 25</p> <p>1 that's why I'm going there. 2 MR. RESTIVO: And I am not going to 3 concede what you just said because I don't know 4 one way or the other whether or not as to your 5 other claims what the objections were, but I 6 don't think you are asking me to do that, but 7 so the record's clear, I don't know whether you 8 are right or not. Whatever the objections are, 9 they are, and the record will speak for itself. 10 I just simply don't know what they are. 11 MS. KEARSE: And I agree, and I did 12 e-mail Cameron yesterday to make sure I'm clear 13 on that. I've gone through all the objections, 14 and for this phase of the proceedings, it's my 15 understanding I only need to really provide 16 information based on your objections to support 17 my claim, but I agree, if we somehow -- if you 18 are going to raise new objections in substance, 19 I would ask the record to reflect that I would 20 reopen the deposition based on new objections, 21 otherwise that's pretty much where we are. 22 BY MS. KEARSE: 23 Q. And, Doctor, I think we clarified, you'll agree 24 that your testimony is limited to laboratory 25 data; is that correct?</p>

7 (Pages 22 to 25)

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1 A. Yes.

2 Q. In preparation for this case, you have not

3 reviewed any W.R. Grace specific documents

4 other than the recipes you referred to in your

5 report, or the formulas?

6 A. That's correct.

7 Q. And you have not been asked to testify in this

8 matter as to any square footage in buildings

9 that have products consistent with W.R. Grace,

10 have you?

11 A. That's correct.

12 Q. Is there a way to calculate on a per sample

13 basis what it cost you to review this data?

14 A. I don't think there's a fair way.

15 Q. In your expertise, an estimate of such?

16 A. No, because, you know, like I don't know, 50

17 percent of them was a matter of a data entry

18 point and the answer is obvious, and for one

19 reason or another they weren't, so I don't

20 think there's any way an average would make any

21 sense.

22 Q. I was just wondering if in 15,000 bulk samples

23 there was any way to make a determination of

24 amount of time for each sample.

25 A. I think you can make whatever division people

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1 and information picked off and entered.

2 Q. And entered simultaneously with that?

3 A. Yeah, contemporaneously.

4 Q. You can tell how computer literate I am. Write

5 it down on a piece of paper and give it to

6 someone.

7 Dr. Lee, with all the bulk sample

8 analysis that you did and building names, did

9 you do any match within your company as to what

10 independent work you may have done on some of

11 those samples in the past?

12 A. We did not.

13 Q. Is that something you could do?

14 A. It's — in theory, but I don't know the

15 practicality of it.

16 Q. And I'm just curious for the four Claimants

17 that I have, maybe for some reason you have

18 looked at bulk sample analysis on those cases

19 before, and to the extent you found it was

20 insufficient information, you may have, in your

21 own file, additional constituent analysis that

22 may help with the additional data, and that's

23 why I'm asking if there was some way to go

24 about doing that.

25 A. Not that I know of, but I can't — I really

Page 27

1 want, but I don't think it's — it's one of

2 those cases where the bulk of the time gets

3 spent on a limited portion of the data.

4 Q. Okay. That's fair. Now, for the four cases

5 that I've asked to pull, which I know you don't

6 have but you've got some of your data with you,

7 do you know when you received the files and

8 data for those four cases? And, again, it's

9 claim 2977, 3406, 3515 and 6941.

10 A. I do not.

11 Q. Would that be something in your files today?

12 A. It may be under some kind of chain of custody

13 or something like that.

14 Q. And with each one of those cases, would you

15 also be able to determine who actually reviewed

16 a file in order to document the analysis and

17 data?

18 A. Well, the people that would have reviewed the

19 file, primary people would be Mike Potter, and

20 I'm not sure if we could identify the typist or

21 data entry person or not.

22 Q. Is there any worksheet for each file that

23 someone would fill out and then it would be put

24 into a database?

25 A. No. Each file is — would have been reviewed

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1 don't know.

2 Q. Okay. Well, what I'll do, and I'll just

3 request on the off chance that your

4 organization has done any prior work on bulk

5 sample analysis with the four buildings that

6 I've mentioned, that we be provided that

7 information. Is that fair?

8 MR. RESTIVO: Well, it's fair that

9 you ask. I don't think it's a fair request.

10 MS. KEARSE: Well, to the extent you

11 have additional information that Dr. Lee has

12 regarding these Claimants, I think it's a fair

13 request.

14 MR. RESTIVO: Well, if your request

15 requires Dr. Lee's organization to pour through

16 contractual commitments with a whole bunch of

17 other folks in order to try to identify a

18 building, we will take the position that that

19 is not a fair request, and it's too difficult

20 and burdensome —

21 MS. KEARSE: I will work with you on

22 that, and that's why I was asking the doctor.

23 It could be as simple as plugging in a name,

24 and it may not be. So to the extent it's

25 accessible on that and you have it, I do

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 request it. I think if it's an overburdensome</p> <p>2 thing, then I think, Jim, you and I can talk</p> <p>3 about it.</p> <p>4 MR. RESTIVO: I mean I am willing to</p> <p>5 ask Grace whether or not to its knowledge one</p> <p>6 of these buildings was involved in a claim or</p> <p>7 in litigation where Dr. Lee's organization may</p> <p>8 have been provided with bulk samples. My</p> <p>9 question is Grace would know if they have seen</p> <p>10 one of these buildings before, and that might</p> <p>11 help Dr. Lee determine what data he has.</p> <p>12 MS. KEARSE: I think that's fair.</p> <p>13 MR. RESTIVO: But, you know, any</p> <p>14 other clients he had, we are just taking on</p> <p>15 more than I think we ought to ask the good</p> <p>16 doctor to do.</p> <p>17 MS. KEARSE: I agree. It's just four</p> <p>18 Claimants, and to the extent that you've got</p> <p>19 data there and we can determine that it's</p> <p>20 accessible, we can work on it that way. I</p> <p>21 think that's a fair way to do it, Jim.</p> <p>22 BY MS. KEARSE:</p> <p>23 Q. All right. Doctor, I'm going to the individual</p> <p>24 Claimants, and we'll see based on what you have</p> <p>25 if you can answer these or not.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Relative to this, we were provided, you know,</p> <p>2 the address, the lab report, the name of the</p> <p>3 laboratory --</p> <p>4 Q. Any time you need a break, you let me know.</p> <p>5 A. Yeah, summary of analysis sheets, and then the</p> <p>6 actual results of analysis, plus there may have</p> <p>7 been asbestos surveys. These may have been</p> <p>8 attached to asbestos surveys or other, and that</p> <p>9 information I don't have here.</p> <p>10 Q. Were you shown any sample analysis that showed</p> <p>11 that the samples contained vermiculite?</p> <p>12 A. No.</p> <p>13 Q. And it's my understanding that you are not</p> <p>14 ruling out that it's not a Grace product, you</p> <p>15 just can't say one way or the other?</p> <p>16 A. Well, I'd say there's insufficient data, but if</p> <p>17 you took the laboratory analysis at face value,</p> <p>18 it's got too much asbestos for a Grace product,</p> <p>19 but without having any information about the</p> <p>20 particular laboratory that did the work and</p> <p>21 their reliability, I think it's a little bit</p> <p>22 fairer to say there's insufficient data.</p> <p>23 Q. Were you provided with any internal Grace</p> <p>24 documents that actually list the American</p> <p>25 Legion building as a recent plaster job?</p>
<p style="text-align: right;">Page 31</p> <p>1 First I'll start with the American</p> <p>2 Legion, which is 3408.</p> <p>3 A. Okay. Let me -- I've got the summary on the</p> <p>4 spreadsheet. I'll pull it up.</p> <p>5 Q. Okay.</p> <p>6 Q. Are you looking at your spreadsheet on a</p> <p>7 computer?</p> <p>8 A. Yes, I am.</p> <p>9 Q. And is that the same spreadsheet that we were</p> <p>10 produced with by a CD?</p> <p>11 A. Yes.</p> <p>12 MR. RESTIVO: With the exception as</p> <p>13 stated in the earlier testimony that the</p> <p>14 spreadsheet he is looking at on his computer</p> <p>15 also has an entry to designate the claim file</p> <p>16 that Speights & Runyan asked to be brought</p> <p>17 today, which files were brought, you do not</p> <p>18 have that designation I do not believe on your</p> <p>19 spreadsheet.</p> <p>20 Q. Okay. Doctor, you let me know when you are</p> <p>21 ready.</p> <p>22 A. I've got it.</p> <p>23 Q. Are you able to tell from that spreadsheet what</p> <p>24 you were actually provided in regards to the</p> <p>25 American Legion claim?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Doctor, in your work over the years in regards</p> <p>3 to various fireproofing and acoustical</p> <p>4 plasters, would it be common for acoustical</p> <p>5 plasters to often get painted if they are on a</p> <p>6 ceiling?</p> <p>7 A. I'd say more often than not, but I don't know</p> <p>8 is probably the best way to describe it.</p> <p>9 Q. Is there any particular constituents you would</p> <p>10 expect to find if you had painted zonolite</p> <p>11 acoustical plaster?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. You've got your formula and your analysis for</p> <p>14 zonolite acoustical plaster?</p> <p>15 A. Right.</p> <p>16 Q. If an acoustical plaster had paint on it, what</p> <p>17 additional constituent would you expect to</p> <p>18 find?</p> <p>19 MR. RESTIVO: Your assumption is that</p> <p>20 the bulk sample includes not only the</p> <p>21 acoustical plastic, but also the painted?</p> <p>22 MS. KEARSE: Yes.</p> <p>23 Q. Well, let me ask this this way, Doctor: Is it</p> <p>24 possible that a sample that contains both</p> <p>25 acoustical plaster and painted?</p>

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1 A. The bulk samples, sure.
 2 Q. And a bulk sample where you've got acoustical
 3 plaster and painted, what additional
 4 constituent would you expect to find generally?
 5 A. Generally you would just see the paint as a
 6 surface layer separate from the bulk.
 7 Q. Would you include the surface layer in your
 8 analysis?
 9 A. We would report the surface layer in the
 10 description, not in the analysis.
 11 Q. Is there a way that you can tell whether or not
 12 a lab, from the data that you reviewed, would
 13 have made that distinction as well?
 14 A. No.
 15 Q. Doctor, if Grace does have files that support
 16 the proposition that a Grace product was
 17 applied in the American Legion building, that's
 18 not something you necessarily would look at; is
 19 that correct?
 20 A. That's not something I would have relied on.
 21 Q. All right. For the American Legion building,
 22 what I'm going to request is that I get a copy
 23 of the file, that I know exactly what you did
 24 have in there.
 25 Doctor, in your --

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1 Q. Okay. Let's go ahead to 3515. I did say I'd
 2 try to limit it to an hour. I didn't check
 3 what time I started so --
 4 MR. RESTIVO: You got three minutes
 5 left.
 6 A. 3515?
 7 Q. 3515.
 8 A. Okay. Catholic Diocese.
 9 Q. And, again, Doctor, can you tell me what you
 10 were provided in regards to the claim?
 11 A. The product, the name, location of the
 12 building, the bulk characterization from -- and
 13 the name of the laboratory, the product alleged
 14 in the claim file, and then the polarized light
 15 microscopy analysis.
 16 Q. And what's your understanding of what the
 17 Claimant has alleged are the Grace products?
 18 A. MonoKote-3.
 19 Q. And it's my understanding that you concluded in
 20 at least 2 samples you had insufficient data;
 21 is that correct?
 22 A. That's correct.
 23 Q. And as to the nonsurface samples, you'll agree
 24 that those are non-Grace products; correct?
 25 A. That's correct.

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1 MR. RESTIVO: Wait a second. What's
 2 your request on that?
 3 MS. KEARSE: What we talked about
 4 earlier, just so I actually have the file he
 5 has on American Legion since we didn't pull it
 6 here.
 7 MR. RESTIVO: Well, the file he has
 8 on American Legion is the claim material you
 9 presented with the claim.
 10 MS. KEARSE: Well, I think it's not
 11 clear whether or not he's got everything that
 12 was submitted with the claim or just the bulk
 13 sample analysis and the claim. That's all I'm
 14 asking. Jim, that just goes to our earlier
 15 discussion on pulling the file so I can look at
 16 them to see if it was everything or just parts.
 17 BY MS. KEARSE:
 18 Q. Doctor, do you know within the American Legion
 19 file what products the Claimant was putting the
 20 claim in for?
 21 A. Which -- that is the --
 22 MR. RESTIVO: She's still on 3406.
 23 A. That's the 3406 one we are talking about?
 24 Q. Yes.
 25 A. Vermiculite acoustical plastic.

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1 Q. And can you tell me if the 2 samples you
 2 reviewed came from the fireproofing material?
 3 A. It says spray applied, but does not indicate
 4 specifically whether it's fireproofing or not.
 5 Q. It's in the data sheets or the data that was
 6 provided to you, it did have such language that
 7 the sample was from what was described as
 8 fireproofing material, would you note that in
 9 your --
 10 A. Yes.
 11 Q. I'm sorry, was that yes?
 12 A. Yes, assuming nobody screwed up.
 13 Q. Okay. And just by way of example, Doctor, and
 14 I'm not suggesting any one, but if I've got a
 15 sample -- and this is an example in the
 16 Catholic Diocese. I know you don't have the
 17 actual document in front of you -- but I do
 18 have a sample CD 10300/0S015. Is that number
 19 within your database?
 20 A. Yes, it is.
 21 Q. And on that same data sheet I do have an
 22 indication it was sprayed-on fireproofing with
 23 that?
 24 A. Okay.
 25 Q. That's not in your --

10 (Pages 34 to 37)

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<p style="text-align: right;">Page 38</p> <p>1 A. Well, in mine it's called spray applied.</p> <p>2 Q. Does that have any bearing one way or another</p> <p>3 in your analysis?</p> <p>4 A. No. It made -- I made the presumption that it</p> <p>5 was fireproofing.</p> <p>6 Q. In my data you refer to this group sample as</p> <p>7 having a nonasbestos component. Does that mean</p> <p>8 that it only had asbestos or what does it mean?</p> <p>9 A. There were two categories, asbestos and</p> <p>10 everything else.</p> <p>11 Q. And these I believe say nonasbestos component?</p> <p>12 A. Not specified.</p> <p>13 Q. Okay.</p> <p>14 Q. And within the Catholic Diocese of Little Rock,</p> <p>15 have you been provided any documents that</p> <p>16 actually reference the sale of MonoKote for</p> <p>17 this building?</p> <p>18 A. Not to my knowledge, but I'd -- to be specific,</p> <p>19 I'd have to look at the file.</p> <p>20 Q. As we sit here today, you do not recall?</p> <p>21 A. No, I don't recall.</p> <p>22 Q. To the extent you were provided any of those</p> <p>23 type of documents, would they be referenced in</p> <p>24 your spreadsheet?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 40</p> <p>1 actually based on the laboratory work. There's</p> <p>2 no evidence that it is there, and to some</p> <p>3 extent there's some -- there's some indication</p> <p>4 that it is not Grace MonoKote, but I don't</p> <p>5 think the data is strong enough to render that</p> <p>6 opinion.</p> <p>7 Q. So we are on the same page, you are not</p> <p>8 prepared to opine one way or the other that</p> <p>9 it's a Grace product or not in the Catholic</p> <p>10 Diocese of Little Rock; correct?</p> <p>11 A. Yeah, that's --</p> <p>12 MR. RESTIVO: I think that's been</p> <p>13 asked and answered. In any event, we intend to</p> <p>14 put on this witness' expert testimony that one</p> <p>15 cannot conclude on these two bulk samples, from</p> <p>16 those two bulk samples that it is a Grace</p> <p>17 product. That is the testimony that is in his</p> <p>18 report and the testimony that we will introduce</p> <p>19 at trial, which is I believe stronger than --</p> <p>20 MS. KEARSE: I know.</p> <p>21 MR. RESTIVO: Just so you know</p> <p>22 exactly where we are coming from.</p> <p>23 MS. KEARSE: I know where you are</p> <p>24 coming from. I want to know exactly where the</p> <p>25 doctor is coming from and if I ask the question</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. They would not?</p> <p>2 A. No. The only thing referenced in the</p> <p>3 spreadsheet is the information relative to the</p> <p>4 samples.</p> <p>5 Q. Do you recall in any of the prior -- I know you</p> <p>6 went through the classifications. Was there</p> <p>7 ever a column for internal Grace documents</p> <p>8 reflecting a product in a building?</p> <p>9 A. No, I don't think so, because we were only</p> <p>10 asked to deal with laboratory work.</p> <p>11 Q. And am I correct then you are not prepared to</p> <p>12 give testimony one way or the other whether or</p> <p>13 not MonoKote is actually present in the</p> <p>14 building; correct?</p> <p>15 A. Beyond that, beyond the information in the</p> <p>16 laboratory analysis provides as to the</p> <p>17 possibility of it being present, that's what</p> <p>18 I'll testify to. So in this case I would, for</p> <p>19 example, say there is no evidence that MonoKote</p> <p>20 is present in the building based on the</p> <p>21 laboratory work.</p> <p>22 Q. But you are simply saying based on the</p> <p>23 laboratory work. You can't say one way or the</p> <p>24 other whether or not it was there; correct?</p> <p>25 A. No, it's a little bit stronger than that it's</p>	<p style="text-align: right;">Page 41</p> <p>1 a different way.</p> <p>2 BY MS. KEARSE:</p> <p>3 Q. At least today, though, Doctor, you cannot say</p> <p>4 W.R. Grace's product was not in that building;</p> <p>5 is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And, Doctor, if you were shown any documents</p> <p>8 that reference the sale of MonoKote to those</p> <p>9 buildings, does that give you any more</p> <p>10 information that would help in your</p> <p>11 determination of whether or not Grace's product</p> <p>12 is actually in the building?</p> <p>13 A. No, because it's really outside the range of</p> <p>14 things that I was asked to do or do do in</p> <p>15 practice.</p> <p>16 Q. In fact, you are limited to one focus, and</p> <p>17 that's whether or not you got a lab report and</p> <p>18 whatever it states on that piece of paper;</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. But you agree with me if there's additional</p> <p>22 information out there, that could be beneficial</p> <p>23 for someone to determine whether or not Grace</p> <p>24 product is actually there; correct?</p> <p>25 MR. RESTIVO: Asked and answered.</p>

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1 MS. KEARSE: I don't think it's been
2 asked.
3 MR. RESTIVO: He told you that's not
4 his area of expertise.
5 MS. KEARSE: He's not going to
6 testify about it, but I'd like an answer to my
7 question.
8 THE WITNESS: I think the answer is
9 that's just beyond the scope of my testimony.
10 MS. KEARSE: For the Catholic
11 Diocese, I'll make the same request, if I could
12 just have a copy of the file that actually was
13 reviewed in order to do the analysis, I'd
14 appreciate that.
15 BY MS. KEARSE:
16 Q. All right. Doctor, we've got the CHP, which is
17 2977. Just let me know when you have it.
18 A. I got it.
19 Q. And you'll agree with me if it's a nonsurface
20 material, we are not going to deal with it;
21 correct?
22 A. Okay.
23 Q. And from your review of the data, you looked at
24 3 samples that you'll agree with me were
25 surface materials?

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1 01-03 -- 01-02. It shows, if my -- I don't
2 have a typo, it shows as having .05 percent
3 asbestos on my sheet.
4 Q. All right. Doctor, let me make sure in this
5 case, similar to the other one, you are not
6 here today to opine with certainty that a Grace
7 product is not there; correct?
8 A. In the building.
9 Q. Right.
10 A. That's right. I'm saying that there's
11 insufficient information in general, and one,
12 if you take data at face value, at least one of
13 the samples it would indicate it would not be
14 there.
15 Q. And that is the data at face value that you
16 have been provided simply on a laboratory
17 analysis; correct?
18 A. That's right.
19 Q. And, again, if there was invoices totaling 810
20 bags of MonoKote that were actually delivered
21 to this building, that would not in any way
22 influence your opinion today?
23 A. No.
24 Q. Is that something you just would want to know?
25 MR. RESTIVO: You mean purely on

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1 A. Yes.
2 Q. And would you agree with me they are referred
3 to as sprayed-on fireproofing? Is that in your
4 data?
5 A. They are listed as spray applied here in my --
6 on my summary.
7 Q. What's your understanding of what product is
8 being claimed in --
9 A. MonoKote 3.
10 Q. And is it correct the data you had only
11 identified the asbestos content?
12 A. Yes.
13 Q. And this, like other samples, for all you know,
14 they could have contained vermiculite, but the
15 only thing that was recorded was the asbestos
16 content; is that correct?
17 A. That's correct, and this is another good
18 illustration where if you take the data at face
19 value, one of the samples is -- suggests it's
20 not a Grace product, but given the overall lack
21 of availability, we just classified it as
22 insufficient data.
23 Q. What specific sample are you referring to in
24 that?
25 A. That is the -- it's sample identified is

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1 interest or as an expert on this assignment?
2 Q. You can tell me either way. If W.R. Grace has
3 invoices for 810 bags of MonoKote to the Cherry
4 Hill Plaza, is that something you'd be
5 interested in knowing?
6 A. Well, I don't think that one way or the other
7 it affects this analysis.
8 Q. So you really don't care if there's 810 bags
9 being delivered there one way or the other?
10 A. No. What I was asked to do was review the
11 analytical data and give an opinion as to what
12 it does or does not demonstrate.
13 Q. Is it fair to say that W.R. Grace didn't
14 provide you with any of the invoices showing
15 the sale of MonoKote 3 to this building?
16 A. I don't know the answer to that. Insofar as I
17 know, we have what's in the claim file --
18 MR. RESTIVO: Do you know whether or
19 not any such invoices were in the claim file,
20 Anne?
21 MS. KEARSE: That's not my question.
22 MR. RESTIVO: Okay. Then we will
23 answer it this way then --
24 MS. KEARSE: I'm asking my question,
25 and that is do you know whether or not W.R.

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 Grace provided you with any invoices showing</p> <p>2 the sale of MonoKote-3 for this building.</p> <p>3 MR. RESTIVO: I'm going to object to</p> <p>4 the form of that question.</p> <p>5 MS. KEARSE: Let him answer that —</p> <p>6 MR. RESTIVO: No, I'm not going to</p> <p>7 let him answer until you clarify your question.</p> <p>8 W.R. Grace provided him with copies of these</p> <p>9 claim files.</p> <p>10 MS. KEARSE: I can ask him two</p> <p>11 different ways, okay.</p> <p>12 MR. RESTIVO: If you are asking</p> <p>13 independent of the claim files, I think that's</p> <p>14 a fair question. If you stuck something in a</p> <p>15 claim file and he happened to get your claim</p> <p>16 file from Grace, that's a different question.</p> <p>17 MS. KEARSE: I'll ask it two</p> <p>18 different ways then.</p> <p>19 MR. RESTIVO: Okay. That's fair.</p> <p>20 BY MS. KEARSE:</p> <p>21 Q. Doctor, do you know whether or not what's in</p> <p>22 the claim packages that you received from W.R.</p> <p>23 Grace, whether or not there were invoices for</p> <p>24 the sale of MonoKote-3 for this building?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 48</p> <p>1 file or not, I do not know.</p> <p>2 Q. But for your purposes it was basically if there</p> <p>3 was laboratory analysis in there, that's what</p> <p>4 you would use?</p> <p>5 A. That's right.</p> <p>6 Q. And, again, similar to the other claim file,</p> <p>7 I'll request an actual copy of what Dr. Lee had</p> <p>8 in regards to that Claimant.</p> <p>9 All right. Last one.</p> <p>10 A. Okay.</p> <p>11 Q. 6941, I'm just going to wait for you to tell me</p> <p>12 you are there.</p> <p>13 A. 6941, got it.</p> <p>14 Q. Now, in my review of your spreadsheet, it's my</p> <p>15 understanding that this is part of the</p> <p>16 Washington Daggy Hall, that you had 3 samples</p> <p>17 with insufficient data; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And, again, these are samples that only showed</p> <p>20 the asbestos content, is that correct?</p> <p>21 A. Yes, well, they show a secondary number, but</p> <p>22 they don't identify.</p> <p>23 Q. Do you know where those samples came from?</p> <p>24 A. Beyond — there is probably information in the</p> <p>25 file that came from environmental health</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Independent of those claim files, has W.R.</p> <p>2 Grace provided you with any information or</p> <p>3 invoices showing the sale of MonoKote-3 to this</p> <p>4 building?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Do you know whether or not you were provided</p> <p>7 with complete claim files or just with the</p> <p>8 information regarding the laboratory analysis?</p> <p>9 A. I do not.</p> <p>10 Q. You don't know one way or the other what's</p> <p>11 contained in the files?</p> <p>12 A. Not beyond — not beyond what we have. I don't</p> <p>13 know if the entire claim file is there or not.</p> <p>14 Q. In your protocol for reviewing this data, was</p> <p>15 there anything that would have alerted you to</p> <p>16 that information that such information was in</p> <p>17 that file?</p> <p>18 A. What my — what we had asked was that the</p> <p>19 attorneys would go through the claim files as</p> <p>20 they received them, identify those with bulk</p> <p>21 sample analysis and provide that information to</p> <p>22 us. Whether or not that's the whole claim</p> <p>23 or — I mean there's a fair amount of stuff</p> <p>24 that was extraneous for my actual analysis, but</p> <p>25 whether in all cases that's the whole claim</p>	<p style="text-align: right;">Page 49</p> <p>1 services. Do you mean where they were</p> <p>2 collected in the building?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. What is your understanding this claim is for?</p> <p>6 A. For the — for the product?</p> <p>7 Q. Yes.</p> <p>8 A. MonoKote-3.</p> <p>9 Q. With regard to the Claim 6941, you don't plan</p> <p>10 to opine that Grace's products was not applied</p> <p>11 there; correct?</p> <p>12 MR. RESTIVO: Not applied where?</p> <p>13 Q. Within the Washington State — the State</p> <p>14 University of Washington, Daggy Hall.</p> <p>15 MR. RESTIVO: Okay. I would ask you</p> <p>16 to sharpen your question, if I'm looking at</p> <p>17 right one, because it looks like there's three</p> <p>18 insufficient data and two wrong components, and</p> <p>19 there may be testimony obviously with respect</p> <p>20 to the two wrong components.</p> <p>21 MS. KEARSE: I'm not asking about</p> <p>22 that.</p> <p>23 MR. RESTIVO: That's why I asked</p> <p>24 please sharpen your question.</p> <p>25</p>

13 (Pages 46 to 49)

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<p>1 BY MS. KEARSE:</p> <p>2 Q. My question centered around the 3 samples with</p> <p>3 insufficient data, and for those 3 samples, we</p> <p>4 determined that within those samples you only</p> <p>5 have them showing how much asbestos was there;</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And it's my understanding you don't have enough</p> <p>9 information one way or the other to say whether</p> <p>10 Grace MonoKote was applied within that</p> <p>11 building; correct?</p> <p>12 A. I think when you extend that term to in that</p> <p>13 building, then the answer is slightly different</p> <p>14 than when you looked at the sample. In that</p> <p>15 building you have the other 2 samples which had</p> <p>16 mineral wool in them. Those samples you can</p> <p>17 clearly say were not Grace fireproofing.</p> <p>18 And then you have these other 3 which</p> <p>19 don't give you any specific information but –</p> <p>20 as to what the product is, but for which if you</p> <p>21 draw any generalized inference, you would say,</p> <p>22 well, the only evidence we have suggests that</p> <p>23 there is no fireproofing.</p> <p>24 Q. Would you know in relation to those 5 samples</p> <p>25 where they were all taken?</p>	<p>1 Q. That's fair. But to the extent if they were</p> <p>2 attached to a Claimant form, that was not</p> <p>3 something you necessarily looked at in order to</p> <p>4 do what you were doing on behalf of W.R. Grace</p> <p>5 in this case; is that correct?</p> <p>6 A. That's correct, but just a little bit stronger,</p> <p>7 that's not something I would have looked at</p> <p>8 because under the normal course I would have</p> <p>9 people pull the analytical sheets from the file</p> <p>10 for me to review as opposed to me going through</p> <p>11 the whole file.</p> <p>12 Q. Right, and to the extent that's in the files,</p> <p>13 the people that are reporting to you would not</p> <p>14 have pulled that for your review; is that</p> <p>15 right?</p> <p>16 A. That's right.</p> <p>17 Q. Is there a way to determine, Doctor, from these</p> <p>18 files what was actually pulled in order to do</p> <p>19 the analysis?</p> <p>20 A. Well, I think you could look at what is</p> <p>21 documented in the spreadsheet, and that will</p> <p>22 tell you what was pulled.</p> <p>23 Q. Did you do any type of audit just to go back to</p> <p>24 make sure the data was entered correctly?</p> <p>25 A. We had a three – well, two-and-a-half step</p>
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<p>1 A. I do not at this point.</p> <p>2 Q. So you don't know if they were samples from</p> <p>3 something originally installed or something</p> <p>4 later installed; is that correct?</p> <p>5 A. No, and I think that's the point in general</p> <p>6 relative to this material when you try make a</p> <p>7 proof.</p> <p>8 Q. Well, let's look at these 3 samples in which</p> <p>9 you have insufficient data; correct?</p> <p>10 A. Yeah.</p> <p>11 Q. You cannot opine one way or the other whether</p> <p>12 those samples are W.R. Grace products; correct?</p> <p>13 A. Yeah, I can – that's true, and beyond that I</p> <p>14 can opine that there is no evidence in those 3</p> <p>15 samples that there are – that that is W.R.</p> <p>16 Grace product.</p> <p>17 Q. So you can't opine today that they are not?</p> <p>18 A. You are exactly right, and I can't opine that</p> <p>19 there's any information that they are.</p> <p>20 Q. I like when I'm right. Let me ask, with Daggy</p> <p>21 Hall, have you been shown any internal W.R.</p> <p>22 Grace products regarding the application of</p> <p>23 MonoKote in that building?</p> <p>24 A. No, and I answered those within the context of</p> <p>25 my recollection. I've been doing this for –</p>	<p>1 audit process. The data was originally</p> <p>2 verified by an independent person at the data</p> <p>3 entry or secretarial level. Then it was –</p> <p>4 each file was independently reviewed by</p> <p>5 Mr. Potter. Then those files that I found of</p> <p>6 interest, primarily those files where there was</p> <p>7 a reasonably complete analysis, were checked by</p> <p>8 me.</p> <p>9 Q. And do you have a list of which ones you</p> <p>10 actually took more of a hands-on approach with?</p> <p>11 A. I do not.</p> <p>12 Q. Is there any way to tell from the file which</p> <p>13 one you had more of a hands-on approach?</p> <p>14 A. I doubt it. It was much heavier in the early</p> <p>15 part because we were work – I spent a fair</p> <p>16 amount of time trying to sort out how we were</p> <p>17 going to make sense out of this mass of</p> <p>18 information.</p> <p>19 Q. And to the extent that was any part of the</p> <p>20 protocol in the file there, I guess to the</p> <p>21 extent we can review that as well?</p> <p>22 A. Yeah.</p> <p>23 MS. KEARSE: With that, I'm going to</p> <p>24 not ask any further questions, but, Jim, if we</p> <p>25 can have copies of the file that Dr. Lee has,</p>

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<p>1 and anything else I put on the record that I</p> <p>2 wanted, that would be great.</p> <p>3 MR. RESTIVO: Again, I will do what I</p> <p>4 said I would do. If you remember, send me a</p> <p>5 short e-mail; otherwise, what I'll do is I'll</p> <p>6 wait for the transcript, and then that will</p> <p>7 remind me what it is I promised to do.</p> <p>8 I have written down the four files</p> <p>9 that I'll ask Dr. Lee when he goes back to the</p> <p>10 shop to send down to me, but to the extent</p> <p>11 you've asked for something else and you don't</p> <p>12 want to wait for me to read the transcript, put</p> <p>13 it in an e-mail to me.</p> <p>14 MS. KEARSE: I will, and I will be up</p> <p>15 there, hopefully you'll have nicer weather up</p> <p>16 there next week, I'll be in Pittsburgh Monday,</p> <p>17 Tuesday, well, down in Wheeling Monday, but to</p> <p>18 the extent there's anything for me to review</p> <p>19 then, I can certainly do it then too.</p> <p>20 MR. RESTIVO: Okay. All right. I</p> <p>21 have no questions. Again, I would --</p> <p>22 MR. BARTHOLOMAEI: I have a question.</p> <p>23 MR. RESTIVO: I'm sorry, I apologize.</p> <p>24 MS. KEARSE: I'm sorry, who is asking</p> <p>25 a question?</p>	<p>1 a particular claim file, that claim file was</p> <p>2 not sent to Dr. Lee.</p> <p>3 MR. BARTHOLOMAEI: I'm just trying to</p> <p>4 confirm that you have no information and you</p> <p>5 are not going to offer any testimony about W.R.</p> <p>6 Grace materials at that location, that's all.</p> <p>7 THE WITNESS: I don't think that's --</p> <p>8 that's right insofar as we sit here today.</p> <p>9 MR. BARTHOLOMAEI: Exactly.</p> <p>10 THE WITNESS: To the extent someone</p> <p>11 discovers it and forwards it to me.</p> <p>12 MR. BARTHOLOMAEI: Something might</p> <p>13 happen in the future, but you don't have it</p> <p>14 sitting here today?</p> <p>15 THE WITNESS: That's right.</p> <p>16 MR. BARTHOLOMAEI: Thank you, Doctor.</p> <p>17 MR. RESTIVO: So the record's clear,</p> <p>18 sitting here today, Dr. Lee doesn't have any</p> <p>19 information, and counsel for Dr. Lee doesn't</p> <p>20 know of any information. As I stated in the</p> <p>21 prior deposition, I understand that</p> <p>22 supplemental information has continued to come</p> <p>23 in. I don't know from your client or not --</p> <p>24 MR. BARTHOLOMAEI: It's not a trick,</p> <p>25 I'm just asking.</p>
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<p>1 MR. BARTHOLOMAEI: I'm about to say</p> <p>2 who it is. It's Mark Bartholomaei from</p> <p>3 Obermayer, and I represent San Diego Gas &</p> <p>4 Electric Company, Sempra Energy Company, and</p> <p>5 Enova Corporation.</p> <p>6 ----</p> <p>7 EXAMINATION</p> <p>8 ----</p> <p>9 BY MR. BARTHOLOMAEI:</p> <p>10 Q. And, Doctor, I just have one or two questions</p> <p>11 for you. This should go pretty quickly, but</p> <p>12 the claim file that I'm concerned with is No.</p> <p>13 11308, and I was going to ask you, were you</p> <p>14 sent any information regarding that claim file?</p> <p>15 A. Beyond the -- it does not appear in my</p> <p>16 spreadsheet.</p> <p>17 Q. So you can't testify today whether any W.R.</p> <p>18 Grace products were at the 101 Ash Street</p> <p>19 location, San Diego, California?</p> <p>20 A. My question is do we have that, 11 --</p> <p>21 Q. 11308.</p> <p>22 THE WITNESS: Is that in there?</p> <p>23 MR. RESTIVO: No. Under the</p> <p>24 procedure, if when this process was underway</p> <p>25 someone did not see bulk sample information in</p>	<p>1 MR. RESTIVO: So you know what we</p> <p>2 have. Sitting here today, we don't believe we</p> <p>3 have any bulk samples from your client.</p> <p>4 We don't waive signature --</p> <p>5 MS. KEARSE: Let me just, if I can</p> <p>6 just clarify one quick question, is that okay?</p> <p>7 MR. RESTIVO: Yeah.</p> <p>8 ----</p> <p>9 RE-EXAMINATION</p> <p>10 ----</p> <p>11 BY MS. KEARSE:</p> <p>12 Q. Doctor, is there anything else you brought with</p> <p>13 you today that you have not testified about?</p> <p>14 A. No.</p> <p>15 MS. KEARSE: Okay. I just wanted to</p> <p>16 know what he brought with him today. That's</p> <p>17 fine. Thank you.</p> <p>18 ----</p> <p>19 (The proceedings were concluded at 2:53 p.m.)</p> <p>20 ----</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
2 COUNTY OF ALLEGHENY) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter
4 and Notary Public in and for the Commonwealth of
5 Pennsylvania, do hereby certify that the witness,
6 RICHARD J. LEE, Ph.D., was by me first duly sworn to
7 testify to the truth; that the foregoing deposition
8 was taken at the time and place stated herein; and
9 that the said deposition was recorded
10 stenographically by me and then reduced to printing
11 under my direction, and constitutes a true record of
12 the testimony given by said witness.

13 I further certify that the inspection, reading
14 and signing of said deposition were NOT waived by
15 counsel for the respective parties and by the
16 witness.

17 I further certify that I am not a relative or
18 employee of any of the parties, or a relative or
19 employee of either counsel, and that I am in no way
20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office this 26th day of
23 February, 2007.

24 _____
25 Notary Public

1 AKF REPORTERS, INC.
AKF Building
2 436 Boulevard of the Allies
Pittsburgh, PA 15219
3 (412) 261-2323
4

February 26, 2007

5 TO: James Restivo, Esq.

6
7 RE: DEPOSITION OF RICHARD J. LEE, Ph.D.
8 NOTICE OF NON-WAIVER OF SIGNATURE

9 Please have the deponent read his deposition
transcript. All corrections are to be noted on the
10 preceding Errata Sheet.

11 Upon completion of the above, the Deponent must
affix his signature on the Errata Sheet, and it is to
12 then be notarized.

13 Please forward the signed original of the
Errata Sheet to Anne Kearse, Esq., for attachment to
14 the original transcript, which is in her possession.
Send a copy of same to all counsel, and also a copy
15 to me.

16 Please return the completed Errata Sheet within
thirty (30) days of receipt hereof.

17
18
19 Heidi H. Willis, RPR, CRR
Court Reporter

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1 COMMONWEALTH OF PENNSYLVANIA) ERRATA
2 COUNTY OF ALLEGHENY) SHEET

3 I, Richard J. Lee, Ph.D., have read the foregoing
4 pages of my deposition given on February 14, 2007,
and wish to make the following, if any, amendments,
5 additions, deletions or corrections:
6 Page/Line Should Read Reason for Change
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15
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17
18
19

20 In all other respects, the transcript is true and
correct.

21 _____
22 RICHARD J. LEE, Ph.D.

23 Subscribed and sworn to before me this

24 _____ day of _____, 20____.

25 Notary Public

AKF Reference No. HW99625

16 (Pages 58 to 60)

A. William Roberts, Jr. & Associates (800) 743-DEPO